

In the Matter of Merchant Mariner's Document No. Z-1104745-D1  
and all other Seaman Documents  
Issued to: ESMOND TURNBULL

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1458

ESMOND TURNBULL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 March 1964, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a joiner on board the United States SS ATLANTIC under authority of the document above described, on 8 February 1964, Appellant wrongfully addressed the Junior Third Mate with foul and abusive language.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Junior Third Mate and the Master-at-arms.

In defense, Appellant offered in evidence his own testimony, that of crewman Valiente, and an entry in the ship's Official Logbook pertaining to the incident in question. Appellant testified that he did not address the Junior Third with foul and abusive language, Appellant talked with the Mate in a normal tone of voice, Appellant gave his package to the Mate immediately upon request and never got it back.

At the end of the hearing, the Examiner rendered a written decision in which he concludes that the charge and specification had been proved.

FINDINGS OF FACT

On 8 February 1964, Appellant was serving as a joiner on board the United States SS ATLANTIC and acting under authority of his document while the ship was into the port of St. Thomas, Virgin

Islands.

About 0115 on this date, Junior Third Mate Aruta was on watch when Appellant returned to the ship with a packages which the Mate ordered Appellant to turn over to the Mate for inspection. Appellant finally complied with the order after arguing with the Mate and addressing him several times with a foul and abusive expression in a loud and excited tone of voice. When the Mate placed the package on the deck without having opened it, Appellant picked it up and left the gangway area.

Appellant has no prior record

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the two essential elements, that Appellant wrongfully used foul and abusive language and that it was directed toward the Junior Third Mate, have not been proved by convincing evidence.

Only the Mate's testimony supports both of these elements but his testimony should be given little weigh because it is biased against Appellant. The testimony of the other three witnesses clearly contradicts that of the Mate.

The Mater-at-arms testified that he heard the foul expression used by Appellant more than once but did not know whether it was directed toward the Mate or the package.

Crewman Valiente consistently denied hearing any foul language but admitted that he told Appellant not to talk "that way" to an officer.

Since the Examiner merely "assumed" that any such language was directed toward the Mate, the charge should be dismissed for lack of sufficient evidence.

APPEARANCE:      Shafter and Shafter of New York City by Bernard  
                         Shafter, Esquire, of Counsel

#### OPINION

No reason appears in the record to reject the Examiner's acceptance of the testimony of the Junior Third Mate and the Master-at-arms as the truth. And it is beyond the realm of reason to believe that Appellant might have been addressing the package, which he very definitely did not want to be parted from him, with foul and abusive language. Considering the above and since there

is no proof of unfair prejudice by the Mate against Appellant, it is my opinion that Appellant is guilty as alleged. The findings are supported by substantial evidence of a reliable and probative character as required by 46 CFR 137.20-95(b).

Crewman Valiente's testimony serves little purpose. It is inconsistent since he testified both that he did not hear anything that was said by Appellant and that he told Appellant not to talk to an officer "that way".

Hence, Appellant's testimony alone contains an outright denial that he used the foul language testified to by the Mate and Master-at-arms. Appellant's testimony was also contrary to the statements of both the Mate and Master-at-arms that Appellant spoke in a loud and excited tone of voice, did not immediately hand the package to the Mate, and took the package with him when he left the gangway area. Thus, it appears that Appellant's testimony is that which should be rejected since it disagrees with the independent recollections of the Mate and Master-at-arms in so many respects.

The entirely probationary suspension imposed by the Examiner is extremely lenient for this grossly disrespectful attitude toward a ship's officer in violation of the agreement contained in the foreign Shipping Articles that crew members will conduct themselves in an orderly manner.

#### ORDER

The order of the Examiner dated at New York, New York, on 16 March 1964, is AFFIRMED.

G. A. Knudsen  
Rear Admiral U. S. Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 19th day of June 1964.